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No. 221

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1951

C. E. KING AND JUANITA M. KING, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS

HOMER L. BRUCE
Attorney for Petitioners.

YOUNG CO., HOUSTON

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The purpose of this brief is simply to reply to the wholly erroneous statement of the case contained in the first paragraph of respondent's argument on pages 7 and 8 of his brief.

In substance respondent states that from the time taxpayer acquired half the stock of J. L. Martin Investment Company to and throughout his acquisition of the sole ownership of the real property, his purpose was to sell, that shortly after he became President in 1943 letters were addressed to the tenants then occupying the houses expressing the Company's desire to sell, that the taxpayer testified (page

8 of respondent's brief) that he went looking for opportunities to sell in 1945 and 1946, and that from the very beginning he proposed to engage in the business of selling to anyone who would buy.

Part of the true facts are set forth on pages 4 and 5 of our brief in support of the petition for certiorari. They were in substance:

After the Company had in 1942 made arrangements to get priorities for the 320 houses and with F.H.A. to guarantee the loan but before any houses were built, petitioners purchased 50% of the stock of the Company. Petitioner, C. E. King, then became its President and as such President had all the houses built under these priorities. The priorities granted by the War Production Board required that the houses be constructed for rental and not for sale.

Petitioner did not buy the remaining 50% of the stock of the Company until July, 1945, after the war with Germany was over. In August, 1945, the Company was dissolved.

As to respondent's statement that shortly after King became President of the corporation in 1943 letters were addressed to tenants then occupying the houses expressing the Company's desire to sell the property: As shown on pages 4 and 5 of the brief for the petitioners, in the early days 22 houses had been rented with an option to buy, and when petitioner became President, he gave notice to those tenants to exercise their options and, when none did, he cancelled the options (R. 77, Respondent's Ex. H, R. 76,

32). The Company did sell 6 houses in 1944 and 22 houses in 1945 (R. 32, 33).

As to petitioner King's testimony that in March, 1946, he did seek opportunities to sell when the Veterans Administration made it possible: This was after the Company had been dissolved in July, 1945, and petitioners were willing at that time to sell houses and to liquidate their position in these properties just like the Three States Lumber Company was doing in *Three States Lumber Company v. Commissioner,* 158 F. 2d 61.

In the first sentence of respondent's argument (Brief page 7), he states:

> "The unchallenged findings of the Tax Court demonstrate that from the time taxpayer acquired half the stock in the J. L. Martin Investment Company to and throughout his acquisition of sole ownership of the real property in question, his purpose was to sell.

This statement is wholly erroneous and in direct conflict with the first sentence of the opinion of the Tax Court (R. 34):

> **"There is no doubt in our minds that the houses in question were originally built primarily for rental purposes."**

Respectfully submitted,
HOMER L. BRUCE
Attorney for Petitioners.